

REMARKS

Summary

Claims 1-3, 5, 8-16, and 20 stand in this application. Claims 4, 6, 7, 17, 18 and 19 have been canceled without prejudice. Claims 1, 9 and 14 are currently amended. No new matter has been added. Favorable reconsideration and allowance of the standing claims are respectfully requested.

Official Notice

The Office Action at page 2, paragraph 2 claims that Applicant failed to traverse the examiner's assertion of official notice. Applicant respectfully disagrees. Applicant respectfully submits that no official notice was taken in the prior Office Action and, therefore, no traverse was necessary. Applicant also submits that the Examiner stated in a telephone conversation on October 8, 2008 that the above assertion was erroneously included within the outstanding Office Action and should be ignored.

35 U.S.C. § 101

At page 2, paragraph 4 of the Office Action claims 14-20 have been rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the non-statutory subject matter rejection. Applicant respectfully submits that these claims have been amended to recite a "computer-readable storage medium" and, therefore, are clearly directed to statutory subject matter. Accordingly, Applicant respectfully requests withdrawal of the rejection with respect to these claims.

35 U.S.C. § 112

Claims 14-20 have been rejected under 35 U.S.C. § 112 for not particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention. Applicant respectfully traverses the rejection based on the above amendments. These claims have been amended in accordance with the Office Action, and removal of

this rejection is respectfully requested. Applicant further submits that the above amendments are made to overcome a § 112 rejection and are not made to overcome the cited references. Accordingly, these amendments should not be construed in a limiting manner.

35 U.S.C. § 103

At page 5, paragraph 6 claims 1, 5, 7, 9, 13, 14 and 19 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Publication Number 2004/0073692 to Gentle et al. (hereinafter “Gentle”) in view of U.S. Patent Number 7,346,005 to Dowdal (hereinafter “Dowdal”). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

To form a *prima facie* case of obviousness under 35 U.S.C § 103(a) the cited references, when combined, must teach or suggest every element of the claim. *See* MPEP § 2143.03, for example. Applicant respectfully submits that the Office Action has not established a *prima facie* case of obviousness because the cited references, taken alone or in combination, fail to teach or suggest every element recited in claims 1, 5, 9, 13 and 14. Therefore claims 1, 5, 9, 13 and 14 define over Gentle and Dowdal whether taken alone or in combination. For example, claim 1 recites the following language, in relevant part:

measuring an average packet delay time by said jitter buffer; and
sending said average packet delay time to said voice activity detector

As correctly noted in the Office Action, the above-recited language is not disclosed by Gentle. According to the Office Action, the above recited language is disclosed by Dowdal at column 4, lines 33-60. Applicant respectfully disagrees.

Applicant respectfully submits that Dowdal fails to disclose the claimed subject matter. For example, Dowdal at the given cite states:

For example, in FIG. 3, the VPU notes the receive time t.sub.rec-1 of a the first packet, packet 1 and calculates the length l.sub.1 of packet 1 based on the payload size in bits and the codec playout time to bit size ratio. For example a 10 byte (80 bit) payload using a G729 codec with a 10 ms/80 bits ratio will contain 10 ms of voice, a 160 bit payload using a codec with a 10 ms/80 bits ratio will contain 20 ms of voice. The VPU will add the appropriate time (eg. 10 or 20 ms) to the

receive time $t_{\text{sub.rec-1}}$ of the first packet to determine the expected receive time
 $t_{\text{sub.exp-2}}$ of the second packet.

The VPU next notes the arrival time $t_{\text{sub.rec-2}}$ of the subsequent packet, packet 2. The difference in the anticipated arrival time $t_{\text{sub.exp-2}}$ and the recorded arrival time $t_{\text{sub.rec-2}}$ of the subsequent packet, packet 2, is the calculated delay $d_{\text{sub.1-2}}$ between packet 1 and packet 2 and is used to determine jitter. The delay between packets 1 and 2 is a calculated delay gap because packet 2 arrived late, i.e. after its anticipated arrival time. The arrival and calculated delay of subsequent packets is calculated in the same manner, as illustrated in FIG. 3. For packets which arrive too early, e.g. packet 4, there is an calculated delay overlap. The calculated delay of each packet is taken as the absolute value of the difference of anticipated and actual arrival time so that calculated delay is always a positive number. The calculated relative delay d for each packet, i , is maintained on a running average in real time to reset the nominal delay for the FIFO buffer when appropriate to allow for proper payout of the received data packets. Individual calculated delay for each packet, i , is continually determined by the formula:
$$d_{\text{sub.i}} = t_{\text{sub.i}} - t_{\text{sub.i-1}} + l_{\text{sub.i-1}}$$

As recited above, Dowdal arguably discloses the calculation of the relative delay for each packet by a VPU. By way of contrast, the claimed subject matter discloses “measuring an average packet delay time by said jitter buffer.” Furthermore, the claimed subject matter discloses “sending said average packet delay time to said voice activity detector.” The Office Action correctly states that Gentle fails to disclose the use of an average package delay time. Further, Applicant submits that Dowdal clearly fails to disclose “sending said average packet delay time to said voice activity detector.” Therefore, Gentle and Dowdal fail to disclose, teach or suggest the missing language. Consequently, Gentle and Dowdal, whether taken alone or in combination, fail to disclose, teach or suggest every element recited in claim 1.

Furthermore, if an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. See MPEP § 2143.03, for example. Accordingly, removal of the obviousness rejection with respect to claim 5. Claim 5 is also non-obvious and patentable over Gentle and Dowdal, taken alone or in combination, at least on the basis of its dependency from claim 1. Applicant, therefore, respectfully requests the removal of the obviousness rejection with respect to these dependent claims.

Independent claims 9 and 14 recite features similar to those recited in claim 1. Therefore, Applicant respectfully submits that claims 9 and 14 are non-obvious and are

patentable over Gentle and Dowdal for reasons analogous to those presented with respect to claim 1. Accordingly, Applicant respectfully requests removal of the obviousness rejection with respect to claims 9 and 14. Furthermore, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claim 13 depends from claim 9, and therefore contains additional features that further distinguish this claim from Gentle and Dowdal, whether taken alone or in combination.

Claims 2, 3, 12, 15 and 16 were rejected under 35 USC § 103(a) as being unpatentable over Gentle in view of Dowdal, and further in view of U.S. Patent Number 6,865,162 to Clemm (hereinafter "Clemm"). Claims 8, 10, 11, and 20 were rejected under 35 USC § 103(a) as being unpatentable over Gentle in view of Dowdal and further in view of U.S. Patent Number 5,920,834 to Sih et al. (hereinafter "Sih"). Applicant respectfully traverses the rejection, and requests reconsideration and withdrawal of the obviousness rejection.

If an independent claim is non-obvious under 35 U.S.C. § 103, then any claim depending therefrom is non-obvious. *See* MPEP § 2143.03, for example. Accordingly, Applicant respectfully requests withdrawal of the obviousness rejection with respect to claims 2, 3, 8-12, 15, 16 and 20 that depend from claims 1, 9 and 14, and therefore contain additional features that further distinguish these claims from the cited references.

Conclusion

For at least the above reasons, Applicant submits that claims 1-3, 5, 8-16, and 20 recite novel features not shown by the cited references. Further, Applicant submits that the above-recited novel features provide new and unexpected results not recognized by the cited references. Accordingly, Applicant submits that the claims are not anticipated nor rendered obvious in view of the cited references.

Applicant does not otherwise concede, however, the correctness of the Office Action's rejection with respect to any of the dependent claims discussed above. Accordingly, Applicant hereby reserves the right to make additional arguments as may be necessary to further distinguish the dependent claims from the cited references, taken alone or in combination, based on additional features contained in the dependent claims

that were not discussed above. A detailed discussion of these differences is believed to be unnecessary at this time in view of the basic differences in the independent claims pointed out above.

It is believed that claims 1-3, 5, 8-16, and 20 are in allowable form. Accordingly, a timely Notice of Allowance to this effect is earnestly solicited.

The Examiner is respectfully requested to contact the undersigned by telephone if such contact would further the examination of the present patent application.

Respectfully submitted,

KACVINSKY LLC



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Under 37 CFR 1.34(a)

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